

## **RULE 108. CHILD SUPPORT AFFIDAVITS AND WORKSHEETS, FINANCIAL STATEMENTS, AND REAL ESTATE CERTIFICATES**

### **(a) Child Support Affidavits.**

(1) In any proceeding under this chapter in which child support is an issue, the parties shall exchange and file child support affidavits. Except for actions initiated by the Department of Health and Human Services, the party initiating the action shall serve and file a completed child support affidavit with the complaint, petition or motion. The responding party shall file a completed child support affidavit with the response or appearance but no later than the case management conference.

(2) If the Department of Health and Human Services seeks to initiate or modify a support order and is unable to secure the affidavit of a custodial parent who is in receipt of public assistance, the Department may submit an affidavit based upon its information and belief regarding the custodial parent's income.

(b) Child Support Worksheets. In any proceeding under this chapter in which child support is an issue, the court may, at any time, order the parties to file child support worksheets.

(c) Financial Statements. In any divorce or judicial separation action in which there is a dispute about either a division of property or an award of spousal support or counsel fees, the parties shall exchange and file a financial statement showing the assets, liabilities, and current income and expenses of both parties and indicating separately all marital and nonmarital property. The financial statement shall be filed within 21 days of the Family Division Scheduling Order or before mediation, whichever is earlier.

### **(d) Miscellaneous requirements.**

(1) *Forms for Filings.* Financial statements, child support affidavits and child support worksheets shall be filed on court-approved forms that are published by the court.

(2) *Signature Under Oath.* All child support affidavits and financial statements shall be signed by the party under oath.

(3) *Privacy of Financial Statements.* Any financial statement or child support affidavit filed shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available, as necessary, to the court, the attorneys whose appearances are entered in the case, the parties to the case, their expert witnesses, and public agencies charged with responsibility for the collection of support.

(4) *Updated Statements.* The parties shall update child support affidavits and financial statements 7 days before trial and file the updated statements with the court.

(e) *Real Estate Certificates.* In every divorce action in which any party has an interest in real estate, the parties shall file with the court, at least 3 days before the hearing, the following information on the court approved form: the book and page numbers of an instrument describing the real estate; the applicable Registry of Deeds; and the town, county and state where the real estate is located.

(f) *Sanctions.*

(1) If a party fails to file any child support affidavit, child support worksheet, financial statement, or real estate certificate required by these rules, the court may make such orders in regard to such failure as are just, including imposition of sanctions, as appropriate, including but not limited to sanctions set forth in Rule 37(b)(2). However, a magistrate may not impose any sanctions or penalties based upon a determination of contempt under Rule 66.

(2) A child support order shall be entered notwithstanding a party's failure to file a child support affidavit. If a party fails to file a child support affidavit without good cause, the court may take any of the following actions:

A. Set that party's gross income in accordance with:

(1) The statutory minimum wage for a 40-hour work week;

(2) Maine Department of Labor statistics;

(3) An affidavit submitted by or testimony of the opposing party;  
or

(4) Information included in that party's most recent federal income tax return.

B. Enter an order requiring that party to release all requested information to the court. Failure to comply with the order may result in a finding of contempt punishable by a fine or jail sentence.

C. Award attorney fees.

### **Advisory Committee's Note July 1, 2010**

The seven-day updating requirement is moved from Rule 112(d) to become Rule 108(d)(4), where it is more appropriately placed. The updating requirement is not changed, except to clarify that the updated statements must be prepared and filed. Rule 108(d) is also amended to place a heading in each paragraph.

### **Advisory Notes June 2008**

Rule 108 addresses the requirements for filing child support affidavits, child support worksheets and financial statements as found in Rule 80(c) and real estate certificates found in Rule 80(j). Under subdivision (a), child support affidavits must be filed in all cases where child support is an issue. Child support is always an issue in original actions such as a divorce involving minor children, parental rights and responsibilities actions and parentage and paternity actions. This is a departure from the current rule that requires that child support affidavits be filed in every action involving a minor child. The prior rule was broader than the statute, 19-A M.R.S. § 2004(1)(A). The committee believes that in many post-judgment proceedings, such as enforcing and modifying contact rights, child support affidavits are not necessary.

Rule 108 interfaces with Rule 112 because one of the original purposes for requiring the filing of the child support affidavit was to reduce discovery. Rule 112 provides the authority for the court to order the parties to file child support affidavits when not required by Rule 108. Accordingly,

when the court (primarily magistrates who have discussions with the parties at conferences) determines that child support should be reviewed, the court can order the parties to file child support affidavits.

Subdivisions (a) (1) and (2) include the qualification and exemption of the Department of Health and Human Services from such filings provided by FAM DIV III.A.2.

Subdivision (b) departs from the prior requirement that parties must file child support worksheets. The experience of magistrates who handle virtually all of these cases suggests that the initial required worksheets are frequently neither filed nor useful to the court. This rule deletes that requirement but permits the court to order the filing of worksheets.

In *Lawrence v. Webber* 2006 ME 36 ¶ 3 n.4, 894 A.2d 480, the Law Court noted that the trial court may have been aided had the parties filed child support worksheets as required by 19-A M.R.S. § 2004(1)(C). The magistrates, however, are in a better position to know the appropriate time to order the parties to file worksheets, which will usually be before hearings and conferences. The court now has available software programs that perform worksheet calculation functions upon entry of appropriate income and other figures.

In subdivision (c), financial statements must be filed in all divorce or judicial separation actions where division of property, spousal support, or counsel fees is an issue. The rule is developed from Rule 80(c). Rule 80(c), however, neither limits the requirement for filing of financial statements to divorce and judicial separation actions nor includes counsel fees as an issue. In practice, however, financial statements are filed only in the two original actions. Also, the court-approved financial statement form refers to counsel fees. Rule 108 interfaces with Rule 112 because the filing of the financial statement triggers discovery. In practice, financial statements were not filed in post-judgment motions or parental rights and responsibilities complaints so that triggering discovery with the filing of the financial statement does not make sense. The committee believes that the rule should reflect practice. Division of property is only an issue in original actions. Although spousal support and counsel fees may be issues in both original actions and post-judgment motions, Rule 108 requires that the financial statement be filed only in the original action, which is the current practice. Rule 112 provides that the court, on its own motion or at the request of the parties, may order

the filing of financial statements in any proceeding under this chapter in which it would assist in discovery or otherwise be appropriate.

Subdivision (c) also changes the time period for filing the financial statement. Often in practice, the financial statement was exchanged at mediation which does not adequately permit the parties to prepare for mediation. The filing of the financial statement shall be ordered in the Family Division Scheduling Order to be within 21 days of the date of the order or before mediation, whichever is earlier. Finally, subdivision (c) also provides the court with authority to shorten or lengthen the time period for filing the financial statement as appropriate.

Subdivision (d) outlines other miscellaneous requirements located in Rule 80(c).

Subdivision (e) relating to filing a real estate certificate is included in Rule 108 so that all required supplemental financial and asset filing requirements are contained within one rule.

Subdivision (f) relates to actions the court may take if there is a failure to file required materials. Subsection (f) (1) is based on Rule 80(c). It indicates that if a party fails to file any required affidavit, worksheet, financial statement, or real estate certificate required by this rule, the court may make such orders in regard to the failure to file as are just, including the imposition of sanctions as appropriate. The rule clarifies that magistrates are not permitted to impose any sanctions or penalties based upon a determination of contempt under Rule 66.

Subdivision (f) (2) is based on FAM DIV III.H.2. It authorizes entry of child support orders notwithstanding a party's failure to file affidavits and sets the process by which the court may determine income levels for assessment of child support. It also allows the court to impose certain obligations for filing upon non-cooperating parties and it allows award of attorney fees. All of this is as provided in FAM DIV III.H.2.